

### **DID YOU KNOW???**

Each month, the Commercial Loan Service Center receives hundreds of loan servicing actions which can be processed under the lender's delegated, unilateral servicing authority. Many common unilateral servicing actions do not require any sort of submission to SBA, which is based upon changes to the SBA loan servicing regulations (13 CFR §§ 120.535 and 120.536) which went into effect May 10, 2007 (SBA notice 5000-1017).

Agency regulations 13 CFR § 120.535 set forth the standards for Lender and CDC loan servicing, loan liquidation and debt collection litigation. The regulation reads as follows:

- (a) *Service using prudent lending standards:* Lenders and CDCs must service 7(a) and 504 loans in their portfolio no less diligently than their non-SBA portfolio, and in a commercially reasonable manner, consistent with prudent lending standards, and in accordance with Loan Program Requirements. Those Lenders and CDCs that do not maintain a non-SBA loan portfolio must adhere to the same prudent lending standards for loan servicing followed by commercial lenders on loans without a government guarantee.<sup>[11](#)</sup>

With the exception of those actions identified below, SBA has now delegated to all lenders the same unilateral servicing authority previously delegated to Preferred Lender Program (PLP) lenders. The Commercial Loan Servicing Center (CLSC) will no longer "acknowledge" actions within a lender's delegated, unilateral servicing authority.

#### **Non-Delegated Actions that Require Prior SBA Approval**

As set forth in 13 CFR §120.536, the following servicing actions require SBA's prior written consent:

1. Increases to the principal amount of a loan above that authorized by SBA at loan origination.
2. Any action that confers a Preference on the Lender or CDC or engages in an activity that creates a conflict of interest.
3. Compromises on the principal balance of a loan.
4. Taking title to any property in the name of SBA.
5. Taking title to environmentally contaminated property, or taking over operation and control of a business that handles hazardous substances or hazardous wastes.
6. Transfers, sells or pledges more than 90% of a loan.
7. Any action for which prior written consent is required by a Loan Program Requirement.

#### **Unilateral Actions that Require Notification to SBA**

The following unilateral actions must be submitted to SBA, so that SBA may update its' accounting records:

1. Loan cancellations.
2. Decrease in loan amount.
3. Changes of maturity.
4. Changes of business name and address.
5. Extensions of disbursement periods.
6. Notice of prepayment.

At times, Colson Services will require the “acknowledgement” of SBA on certain actions for loans sold on the secondary market (deferments, interest rate changes, etc). **SBA will continue to acknowledge these actions at lender’s request.** It is also important to note that for all servicing actions not requiring SBA's prior written consent, Lenders must document the justifications for their decisions. Lenders must also retain these and any supporting documents in their file for future SBA review to determine if the actions taken by the Lender were prudent, commercially reasonable, and complied with all Loan Program Requirements.

If you have any questions in regards to this article or need further guidance, please do not hesitate to call the Servicing Center for assistance.

<sup>[1]</sup> Loan Program Requirements are defined in 13 CFR §120.10 as “requirements imposed upon Lenders or CDCs by statute, SBA regulations, any agreement the Lender or CDC has executed with SBA, SBA SOPs, official SBA notices and forms applicable to the 7(a) and 504 loan programs, and loan authorizations, as such requirements are issued and revised by SBA from time to time. For CDCs, this term also includes requirements imposed by Debentures, as that term is defined in §120.802.”